

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANTHONY RUGGIERO,

Plaintiff,

v.

BRIAN FISHER, et al.,

Defendants.

DECISION AND ORDER
15-CV-962-A

This *pro se* civil rights action primarily challenges policies at a disciplinary facility of the New York State Department of Corrections and Community Supervision that require certain categories of inmates to remained handcuffed with a waist chain during allotted exercise time. The action was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings.

On September 27, 2018, Magistrate Judge McCarthy filed a Report and Recommendation (Dkt. No. 139) recommending that defendants' motion for summary judgment pursuant to Fed. R. Civ. P. 56 (Dkt. No. 102) be granted, and that plaintiff Ruggiero's motion to supplement the Complaint pursuant to Fed. R. Civ. P. 15 (Dkt. No. 133) be denied.

On October 11, 2018, plaintiff Ruggiero filed objections to the Report and Recommendation. Dkt. No. 142. Defendants filed a response to plaintiff's objections (Dkt. No. 144) on November 1, 2018. The plaintiff filed a reply (Dkt. No. 147) on November 15, 2018, and the Court deemed the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), the Court makes a *de novo* determination of

those portions of the Report and Recommendation to which specific objections have been made. Upon *de novo* review, and after considering the parties' arguments in light of the *pro se* status of plaintiff Ruggiero, the Court hereby adopts Magistrate Judge McCarthy's findings and conclusions. The Court specifically notes that, contrary to the plaintiff's objections, the Court's grant of summary judgment on the feasibility of exercise while restrained is not contrary to the decision in *Ruggiero v. Prack*, 168 F.Supp.3d 495, 518-521 (W.D.N.Y. 2016), because the factual record in that case was found insufficient to decide his similar claim on undisputed facts material to the feasibility of exercise on a motion for summary judgment. *Compare* 168 F.Supp.3d at 518-521 *with* Dkt. No. 139, pp. 3-11. For these reasons, it is

ORDERED, pursuant to 28 U.S.C. § 636(b)(1), and for all the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, plaintiff Ruggiero's motion to amend the Complaint (Dkt. No. 133) is denied, and the defendants' motion for summary judgment (Dkt. No. 102) is granted. The Clerk of Court enter Judgment for the defendants and shall take all steps necessary to close the case.

IT IS SO ORDERED.

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: April 1, 2019